



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2004

Ms. Julie Joe
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2004-1601

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197102.

The Travis County Sheriff's Office (the "sheriff") received two requests for information relating to the same specified case number. The first request also seeks access to information relating to a particular address. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.108(a)(3) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information relating to a threat against a peace officer collected or disseminated under Section 411.048 [of the Government Code.]" A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

Section 411.048(b) of the Government Code provides that

[t]he bureau of identification and records [of the Texas Department of Public Safety ("DPS")] shall establish and maintain a central index in the law enforcement information system maintained by the [DPS] to

(1) collect and disseminate information relating to an individual's expression of intent to inflict serious bodily injury or death on a peace officer ; and

(2) alert a peace officer of an expression of intent to inflict serious bodily injury or death on the officer.

Gov't Code § 411.048(b). Section 411.048(c) provides that

[a] criminal justice agency, after making each determination required under Subsection (d) [of section 411.048], shall immediately enter into the information system an electronic report of an individual who expresses an intent to inflict serious bodily injury or death on a peace officer.¹ The agency shall enter the information in the form and manner provided by rules adopted by the director [of the DPS].²

Id. § 411.048(c). Section 411.048(d) provides that

[b]efore entering information collected under this section into the information system, a criminal justice agency must determine that the report described by Subsection (c):

(1) is not from an anonymous source; and

(2) consists of an expression of intent to inflict serious bodily injury or death on a peace officer.

Id. § 411.048(d). You inform us that the submitted information relates to threats against peace officers. You state that the sheriff has provided this information to DPS pursuant to section 411.048. Based on your representations and our review of the information at issue, we conclude that the sheriff may withhold the submitted information under section 552.108(a)(3). As we are able to make this determination, we need not address your other arguments against disclosure.

¹Section 411.048(a)(1) adopts the definition of "criminal justice agency" found at article 60.01 of the Code of Criminal Procedure. Article 60.01(6) provides that "'criminal justice agency' means a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and allocates a substantial part of its annual budget to the administration of criminal justice." Crim. Proc. Code art. 60.01(6).

²Section 411.048(i) authorizes the DPS to adopt rules to implement and enforce section 411.048. The DPS rules are found at subchapter C of chapter 5 of title 37 of the Texas Administrative Code. *See* Gov't Code 37 T.A.C. § 5.31 *et seq.*

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

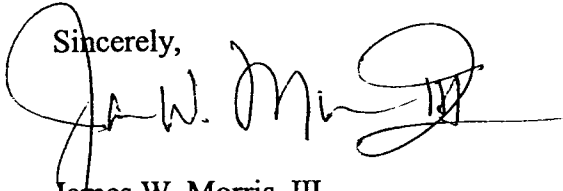
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a large, stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 197102

Enc: Submitted documents

c: Mr. Randolph G. Mueller
P.O. Box 161057
Austin, Texas 78716
(w/o enclosures)

Ms. Lisa A. Padilla
McCathern Mooty Buffington, L.L.P.
3710 Rawlins, Suite 1600
Dallas, Texas 75219
(w/o enclosures)